7 d/989-2

Circular 7d

Mandatory Deposit of Copies or Phonorecords for the Library of Congress

(Under Section 407 of the Copyright Act)

MANDATORY DEPOSIT REQUIREMENTS

On January 1, 1978, all works published with a notice of copyright in the United States became subject to the mandatory deposit requirements of the United States Copyright Act (title 17, United States Code). These requirements are similar to the "legal deposit" or "depot legal" laws in effect in other countries.

On March 1, 1989, the qualification "with notice of copyright" was eliminated from the mandatory deposit provision. This change was made in Public Law 100-568, the Berne Convention Implementation Act of 1988. **As a result of this change, all works protected by copyright and published in the United States on or after March 1, 1989, are subject to mandatory deposit whether they are published with or without a notice.**

The mandatory deposit provision ensures that the Copyright Office is entitled to receive copies of every copyrightable work published in the United States. These deposits are added to the collections of the Library of Congress or used in the national library programs.

HOW THE MANDATORY DEPOSIT REQUIREMENTS WORK

Section 407 of the copyright law requires the "owner of copyright or of the exclusive right of publication" in a work published in the United States to deposit the required number of copies in the Copyright Office within 3 months of the date of such publication.

Publication is defined in the copyright law as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending."

Deposits should be sent to:

Register of Copyrights
Attn: Deposits and Acquisitions Division
Library of Congress
Washington, D.C. 20559

WHEN THE REGISTER SENDS A DEMAND; PENALTIES FOR FAILURE TO DEPOSIT

The law envisions that deposit will be made voluntarily to satisfy this requirement. To enforce this legal obligation, however, or to ensure a more rapid deposit of a work the Library needs promptly, the Register of Copyrights may make a written demand for the required deposit at any time after publication. If the required deposit is not made within 3 months of the demand, the person or organization obligated to make the deposit is liable for a fine of not more than $250 for each work plus the retail price of the copies; if the refusal to comply is willful or repeated, an added fine of $2500 may be incurred.

WHEN THE DEPOSIT REQUIREMENT APPLIES TO FOREIGN WORKS

Although the deposit requirements are limited to works published in the United States, they do apply to a work that was first published in a foreign country **as soon as that work is published in the United States through the distribution of copies or phonorecords** that are either imported or are part of an American edition.

WHAT MUST BE DEPOSITED

In general, the deposit must consist of **two** complete copies or phonorecords of the best edition of the work.

If the work is a sound recording, the deposit must include **two** complete phonorecords of the best edition, **plus** any text or pictorial matter published with the phonorecord. Examples of the textual material include record sleeves, album covers, and separate leaflets or booklets included in the sleeve or album.

If the work is a motion picture, the deposit consists of **one** complete copy of the best edition, **plus** a separate description of its contents such as a continuity, press book, or synopsis.

BEST EDITION OF A WORK

The definition of "best edition" in the law makes it clear that the Library of Congress is entitled to receive the copies or

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READEX FICHE best copy available

phonorecords of the edition that best suits its needs. Its choice may be made from any editions that have been published in the United States before the date of deposit.

When two or more editions of the same version of a work have been published before the date of deposit, the Library of Congress generally considers the one of the highest quality to be the best edition. If, on the date of deposit, a better edition existed but was not submitted, the Copyright Office is entitled to request the better edition on behalf of the Library of Congress. The Library of Congress lists criteria to follow in judging quality, in its current "best edition" statement. When the criteria listed do not apply to a particular work, the Copyright Office will confer with appropriate officials of the Library of Congress to obtain a determination as to the best edition of that work.

For a detailed description of the "best edition" criteria, write to the following address for Circular 7b:

Publications Section, LM-455
Copyright Office
Library of Congress
Washington, D.C. 20559

EXEMPTIONS FROM THE DEPOSIT REQUIREMENT

Because many deposits are not suitable for addition to the Library of Congress collections or for use in national library programs, the Copyright Office has issued regulations that exempt certain categories of works entirely from the mandatory deposit requirements. These regulations also reduce the required number of copies or phonorecords from two to one for certain other categories. For further information about these regulations, see Part 202 of 37 CFR, Chapter II, or write to the Copyright Office.

Special Relief

Under special circumstances, special relief from deposit requirements may be requested for any published work not exempt from mandatory deposit. Requests are most frequently based on undue burden or cost to a copyright owner. The grant of special relief is discretionary with the Copyright Office and will depend on a careful balance of the acquisition policies of the Library of Congress, the examining requirements of the Copyright Office (if registration is sought), and the hardship to the copyright owner.

Requests must set forth specific reasons why special relief should be granted and must be signed by or on behalf of the owner of copyright or the owner of the exclusive right of publication in the work. They should be sent as follows:

a. If registration is sought: Chief, Examining Division, Copyright Office, Library of Congress, Washington, D.C. 20559; or

b. If only mandatory deposit is to be made: Chief, Deposits and Acquisitions Division, Copyright Office, Library of Congress, Washington, D.C. 20559.

USE OF MANDATORY DEPOSIT TO SATISFY REGISTRATION REQUIREMENTS

Under section 407, deposit for the collections of the Library of Congress is mandatory; registration of a copyright claim under section 408 is voluntary. While not a condition of copyright protection, registration may under certain circumstances allow the owner a broader range of remedies in infringement suits. To satisfy requirements for both, the following must be sent **in one package** to the Register of Copyright: (1) mandatory deposit copies, (2) a completed application for registration, and (3) a $10 nonrefundable filing fee payable to the Register of Copyrights.

Copyright Office • Library of Congress • Washington, D.C. 20559

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